DRAUGHT
OF A
FUNDAMENTAL CONSTITUTION
FOR THE
COMMONWEALTH OF VIRGINIA.

TO the citizens of the Commonwealth of Virginia, and all others whom it may concern, the Delegates for the ſaid Commonwealth in Convention aſſembled, ſend greeting.

It is known to you and to the world, that the government of Great Britain, with which the American ſtates were not long ſince connected, aſſumed over them an authority unwarrantable and oppreſſive; that they endeavored to enforce this authority by arms, and that the ſtates of New Hampſhire, Maſſachuſets, Rhode iſland, Connecticut, New York, New Jerſey, Pennſylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia, conſidering reſiſtance, with all its train of horrors, as a leſſer evil than abject ſubmiſſion, cloſed in the appeal to arms. It hath pleaſed the ſovereign diſpoſer of all human events to give to this appeal an iſſue favourable to the rights of the ſtates; to enable them to reject for ever all dependance on a government which had ſhewn itſelf ſo capable of abuſing the truſts repoſed in it; and to obtain from that government a ſolemn and explicit acknowledgment that they are free, ſovereign, and independant ſtates. During the progreſs of that war through which we had to labour for the eſtabliſhment of our rights, the legiſlature of the commonwealth of Virginia, found it neceſſary to make a temporary organization of government for preventing anarchy, and pointing our efforts to the two important objects of war

against our invaders, and peace and happiness among ourselves. But this, like all other their acts of legislation, being subject to change by subsequent legislatures, possessing equal powers with themselves, it has been thought expedient that it should receive those amendments which time and trial have suggested, and be rendered permanent by a power superior to that of the ordinary legislature. The general assembly therefore of this state recommended it to the good people thereof, to chuse delegates to meet in general convention, with powers to form a constitution of government for them, and to declare those fundamentals to which all our laws present and future shall be subordinate: and in compliance with this recommendation they have thought proper to make choice of us, and to vest us with powers for this purpose.

We therefore the delegates, chosen by the said good people of this state for the purpose aforesaid, and now assembled in general convention, do, in execution of the authority with which we are invested, establish the following constitution and fundamentals of government for the said state of Virginia.

The said state shall for ever hereafter be governed as a commonwealth.

The powers of government shall be divided into three distinct departments, each of them to be confided to a separate body of magistracy, to wit, those which are legislative to one, those which are judiciary to another, and those which are executive to another. No person or collection of persons being of one of these departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly permitted.

I. Legislature. The legislature shall consist of two branches, the one to be called the House of Delegates, the other the Senate, and both together the General Assembly. The concurrence of both of these, expressed on three several readings, shall be necessary to the passage of a law.

Election. Delegates for the general assembly shall be chosen on the last Monday of November in every year, but if an

election cannot be concluded on that day, it may be adjourned from day to day till it can be concluded.

Delegates. The number of delegates which each county may send shall be in proportion to the number of its qualified electors, and the whole number of delegates for the state shall be so apportioned to the whole number of qualified electors in the state, that no county shall have exactly, or more than one delegate for every [illegible] electors. Whenever any county shall by this rule lose a delegate, or be entitled to a new one, the house of delegates to declare the vacancy or new appointment. But they shall, during that term, readjust the proportion so as to bring their number within the limits before mentioned at the ensuing election. If any county be reduced in its qualified electors below the number entitling it to send one delegate, let it be annexed to some adjoining county.

Senate. For the election of senators, let the several counties be allotted by the senate from time to time into such districts as they shall find best, and let each county at the time of electing its delegates, chuse senatorial electors, qualified as themselves are, and four times as many for each delegate their county is entitled to send, who shall convene, and conduct themselves in such manner as the legislature shall direct, with the senatorial electors from the other counties of their district, and there chuse by ballot one senator for every six delegates to which their district is entitled to chuse. Let the senatorial districts be divided into two classes, and let the members of each of one of them be dissolved at the first ensuing general election of delegates, the other at the next, and so on alternately for ever.

Electors. All free male citizens, of full age, and sane mind, who for one year before shall have been resident in the county, or shall through the whole of that time have possessed therein real property of the value of [illegible] or shall for the same time have been enrolled in the militia, and no others, shall have a right to vote for delegates for the said county, and for senatorial electors for the district. They shall give their votes personally, and viva

General assembly. The general assembly shall meet at the place to which the last adjournment was, on the 4th day after the day of the election of delegates, and thenceforward at any other time or place on their own adjournments, till their office expires which shall be on the day preceding that appointed for the meeting of the next general assembly. But if they shall at any time adjourn for more than one year, it shall be as if they had adjourned for one year precisely. Neither house without the concurrence of the other shall adjourn for more than one week, nor to any other place than the one at which they are sitting. The governor shall also have power, with the advice of the council of state, to call them at any other time to the same place, or to a different one, if that shall have become, since the last adjournment, dangerous from an enemy, or from infection.

Quorum. A majority of either house shall be a quorum, and shall be requisite, for doing business: but any smaller proportion which from time to time shall be thought expedient by the respective houses, shall be sufficient to call for, and to punish, their non-attending members, and to adjourn themselves for any time not exceeding one week.

Privileges. The members, during their attendance on the general assembly, and for so long a time before and after as shall be necessary for travelling to and from the same, shall be privileged from all personal restraint and assaults, and shall have no other privilege whatsoever. They shall receive during the same time, daily wages in gold or silver equal to the value of two bushels of wheat. This value shall be deemed one dollar by the bushel, till the year 1790, in which, and in every tenth year thereafter, the general court, at their first sessions in the year, shall cause a special jury, of the most respectable merchants and farmers, to be summoned, to declare what shall have been the averaged value of wheat during the last ten years, which averaged value shall be the measure of wages for the ten subsequent years.

Exclusions. Of this general assembly the treasurer, attorney general, register, ministers of the gospel, officers of the regu-

The general assembly shall meet at the place to which

General assembly.

at the time of this state, or of the United states, persons receiving salaries or emoluments from any power foreign to our confidency, those who are not resident in the county for which they are chosen delegates or district for which they are chosen senators, those who are not qualified as electors, persons who shall have committed treason, felony or such other crime as would subject them to infamous punishment, or who shall have been convicted by due course of law of bribery or corruption in endeavouring to procure an election to the said assembly, shall be incapable of being members. All others not herein elsewhere excluded, who may elect, shall be capable of being elected thereto.

Quorum.

any member of the said assembly accepting any office of profit under this state, or the United states, or any of them, shall thereby vacate his seat, but shall be capable of being re-elected.

Vacancies occasioned by such disqualifications, by death, or otherwise, shall be supplied by the electors, on a writ from the speaker of the respective house.

Vacancies.

The general assembly shall not have power to infringe this constitution; to abridge the civil rights of any person on account of his religious belief; to restrain him from professing and supporting that belief, or to compel him to contributions, other than those he shall have personally stipulated, for the support of that or any other; to ordain death for any crime but treason or murder, or military offences; to pardon, or give a power of pardoning persons duly convicted of treason or felony, but instead thereof they may substitute one or two new trials, and no more; to pass laws for punishing actions done before the existence of such laws; to pass any bill of attainder of treason or felony; to prescribe torture in any case whatever; nor to permit the introduction of any more slaves to reside in this state, or the continuance of slavery beyond the generation which shall be living on the thirty-first day of December, one thousand eight hundred, all persons born after that day being hereby declared free.

Limits of power.

Exclusion.

The general assembly shall have power to cede from this state all or any part of its territory westward of the Ohio, or of the meridian of the mouth of the great Kanhaway, and to cede to Congress one hundred square miles of territory in any other part of this state, exempted from the jurisdiction and government of this state so long as Congress shall hold their sessions therein, or in any territory adjacent thereto, which may be ceded to them by any other state.

They shall have power to appoint the speakers of their respective houses, treasurer, auditors, attorney general, registers, all general officers of the military, their own clerks and sergeants, and no other officers, except where, in other parts of this constitution, such appointments are expressly given them.

II. Executive. Governor.

The executive powers shall be exercised by a governor, who shall be chosen by joint ballot of both houses of assembly, and when chosen shall remain in office five years, and be ineligible a second time. During this term he shall hold no other office or emolument under this state, or any other state or power whatsoever. By executive powers, we mean no reference to those powers exercised under our former government by the crown as of its prerogative, nor that these shall be the standard of what may or may not be deemed the rightful powers of the governor. We give him those powers only which are necessary to execute the laws (and administer the government) and which are not in their nature either legislative or judiciary. The application of this idea must be left to reason. We do however expressly deny him the prerogative powers of erecting courts, offices, boroughs, corporations, fairs, markets, ports, beacons, light-houses, and sea-marks; of laying embargoes, of establishing precedence, of remaining within the state or recalling to it any citizen thereof, and of making denizens, except so far as he may be authorised from time to time by the legislature to exercise any of those powers. The powers of declaring war and concluding peace, of contracting alliances, of issuing letters of marque and reprisal, of raising or introducing armed forces, of building

armed vessels, forts, or winding holds, of coining money or regulating its value, of regulating weights and measures, we have to be exercised under the authority of the confederation; but in all cases respecting them which are not of the said confederation, they shall be exercised by the governor, under the regulation of such laws as the legislature may think it expedient to pass.

The whole military of the state, whether regular, or of militia, shall be subject to his directions; but he shall leave the execution of those directions to the general officers appointed by the legislature.

His salary shall be fixed by the legislature at the session of assembly in which he shall be appointed, and before such appointment be made; or if it be not then fixed, it shall be the same which his next predecessor in office was entitled to. In either case he may demand it quarterly out of any money which shall be in the public treasury; and it shall not be in the power of the legislature to give him less or more, either during his continuance in office, or after he shall have gone out of it. The lands, houses, and other things appropriated to the use of the governor, shall remain to his use during his continuance in office. II. Executive Governor.

A *council of state* shall be chosen by joint ballot of both houses of assembly, who shall hold their offices seven years, and be ineligible a second time, and who, while they shall be of the said council, shall hold no other office or emolument, under this state, or any other state or power whatsoever. Their duty shall be to attend and advise the governor when called on by him; and their advice in any case shall be a sanction to him. They shall also have power, and it shall be their duty, to meet at their own will, and to give their advice, though not required by the governor, in cases where they shall think the public good calls for it. Their advice and proceedings shall be entered in books to be kept for that purpose, and shall be signed as approved or disapproved by the members present. These books shall be laid before either house of assembly when called for by them. The said council shall consist of eight mem- Council of state.

bers for the present; but their numbers may be increased or reduced by the legislature, whenever they shall think it necessary, provided such reduction be made only as the appointments become vacant by death, resignation, disqualification, or regular deprivation. A majority of their actual number, and not fewer, shall be a quorum. They shall be allowed for the present [illegible] each by the year, payable quarterly out of any money which shall be in the public treasury. Their salary however may be increased or abated from time to time at the discretion of the legislature; provided such increase or abatement shall not, by any ways or means, be made to affect either then, or at any future time, any one of those then actually in office. At the end of each quarter, their salary shall be divided into equal portions by the number of days on which, during that quarter, a council has been held, or required by the governor, or by their own adjournment, and one of those portions shall be withheld from each member for every one of the said days which, without cause allowed good by the board, he failed to attend, or departed before adjournment without their leave. If no board should have been held during that quarter, there shall be no deduction.

President. They shall annually chuse a *president*, who shall preside in council in the absence of the governor, and who, in case of his office becoming vacant by death or otherwise, shall have authority to exercise all his functions, till a new appointment be made, as he shall also in any interval during which the governor shall declare himself unable to attend to the duties of his office.

III. Judiciary The *Judiciary* powers shall be exercised by county courts and such other inferior courts as the legislature shall think proper to continue or to erect, by three superior courts, to wit, a Court of Admiralty, a General Court of Common Law, and a High Court of Chancery; and by one supreme court to be called the Court of Appeals.

The judges of the High Court of Chancery, General Court, and Court of Admiralty, shall be four in number

each, to be appointed by joint ballot of both houses of assembly, and to hold their offices during good behaviour. While they continue judges, they shall hold no other office or emolument under this state, or any other state or power whatsoever, except that they may be delegated to congress, receiving no additional allowance.

These judges, assembled together, shall constitute the Court of Appeals, whose business shall be to receive and determine appeals from the three superior courts, but to receive no original causes, except in the cases expressly permitted herein.

A majority of the members of either of these courts, and not fewer, shall be a quorum. But in the Court of Appeals nine members shall be necessary to do business. Any smaller numbers however may be authorized by the legislature to adjourn their respective courts.

They shall be allowed for the present each by the year, payable quarterly out of any money which shall be in the public treasury. Their salaries however may be increased or abated, from time to time, at the discretion of the legislature, provided such increase or abatement shall not, by any ways or means, be made to affect, either then, or at any future time, any one of those then actually in office. At the end of each quarter their salary shall be divided into equal portions by the number of days on which, during that quarter, their respective courts sat, or should have sat, and one of these portions shall be with held from each member for every of the said days, which, without cause allowed good by his court, he failed to attend, or departed before adjournment without their leave. If no court should have been held during the quarter, there shall be no deduction.

There shall moreover be a court of *Impeachments* to consist of three members of the council of state, one of each of the superior courts of Chancery, Common Law and Admiralty, two members of the House of Delegates

and one of the Senate, to be chosen by the body respectively of which they are, before this court any member of the three branches of government, that is to say, the governor, any member of the council, of the two houses of legislature, or of the superior courts, may be impeached by the governor, the council, or either of the said houses or courts, and by no other, for such misbehaviour in office as would be sufficient to remove him therefrom; and the only sentence they shall have authority to pass shall be that of deprivation and future incapacity of office. Seven members shall be requisite to make a court, and two thirds of those present must concur in the sentence. The offences cognisable by this court shall be cognisable by no other, and they shall be triers of the fact as well as judges of the law.

The justices or judges of the inferior courts already erected, or hereafter to be erected, shall be appointed by the governor, on advice of the council of state, and shall hold their offices during good behaviour, or the existence of their court. For breach of the good behaviour, they shall be tried according to the laws of the land, before the Court of Appeals, who shall be judges of the fact as well as of the law. The only sentence they shall have authority to pass shall be that of deprivation and future incapacity of office, and two thirds of the members present must concur in this sentence.

IV. Council of Revisions.

All courts shall appoint their own clerks, who shall hold their offices during good behaviour, or the existence of their court: they shall also appoint all other their ministerial officers, to continue during their pleasure. Clerks appointed by the supreme or the superior courts shall be removeable by their respective courts. Those to be appointed by other courts shall have been previously examined, and certified to be duly qualified, by some two members of the general court, and shall be removeable for breach of the good behaviour by the Court of Appeals only, who shall be judges of the fact as well as of the law. Two thirds of the members present must concur in the sentence.

The juſtices or judges of the inferior courts may be members of the legiſlature.

No judgment of the inferior courts ſhall be final, in any civil caſe, of greater value than 20 bushels of wheat, as laſt rated in the general court for ſtating the allowance to the members of the general aſſembly, nor in any caſe of treaſon, felony, or other crime which would ſubject the party to infamous puniſhment.

In all cauſes depending before any court, other than thoſe of impeachments, of appeals, and military courts, facts put in iſſue ſhall be tried by jury, and in all courts whatever witneſſes ſhall give their teſtimony viva voce in open court, wherever their attendance can be procured: and all parties ſhall be allowed counſel and compulſory proceſs for their witneſſes.

Fines, amerciements, and terms of imprisonment, not indefinite by the law, other than for contempt, ſhall be aſſeſſed by the jury, triers of the offence.

IV. Council of Reviſion.

The governor, two counſellors of ſtate, and a judge from each of the ſuperior Courts of Chancery, Common Law, and Admiralty, ſhall be a council to reviſe all bills which ſhall have paſſed both houſes of aſſembly, in which council the governor, when preſent, ſhall preſide. Every bill, before it becomes a law, ſhall be preſented to this council, who ſhall have a right to adviſe its rejection, returning the bill with their advice and reaſons in writing to the houſe in which it originated, who ſhall proceed to reconſider the ſaid bill. But if after ſuch reconſideration, two thirds of the houſe ſhall be of opinion the bill ſhould paſs finally, they ſhall paſs and ſend it, with the advice and written reaſons of the ſaid council of reviſion to the other houſe, wherein if two thirds alſo ſhall be of opinion it ſhould paſs finally, it ſhall thereupon become law: otherwiſe it ſhall not.

If any bill, preſented to the ſaid council, be not, within one week (excluſive of the day of preſenting it) returned by them, with their advice of rejection and rea-

to the house wherein it originated, or to the clerk of the said house, in case of its adjournment the expiration of the week, it shall be law from the expiration of the week, and shall then be demandable by the clerk of the House of Delegates, to be filed of record in his office.

The bill which they approve shall become law from the time of such approbation, and shall then be returned to, or demandable by, the clerk of the House of Delegates, to be filed of record in his office.

Militia.

A bill rejected on advice of the Council of Revision may again be proposed during the same session of assembly, with such alterations as will render it conformable to their advice.

Conventions.

The members of the said Council of Revision shall be appointed from time to time by the board or court of which they respectively are. Two of the executive and two of the judiciary members shall be requisite to do business: and to prevent the evils of non-attendance, the board and courts may, at any time, name all, or so many as they will, of their members in the particular order in which they would chuse the duty of attendance to devolve from preceeding to subsequent members, the preceeding failing to attend. They shall have additionally for their services in this council the same allowance as members of assembly have.

Confederacy

The Confederation is made a part of this constitution, subject to such future alterations as shall be agreed to by the legislature of this state, and by all the other confederating states.

Delegates to Congress.

The Delegates to Congress shall be five in number; any three of whom, and no fewer, may be a representation. They shall be appointed by joint ballot of both houses of assembly for any term not exceeding one year, subject to be recalled, within the term, by joint vote of both the said houses. They may at the same time be members of the legislative or judiciary departments, but not of the executive.

The benefits of the writ of Habeas Corpus shall be extended, by the legiſlature, to every perſon within this ſtate, and without fee, and ſhall be ſo facilitated that no perſon may be detained in priſon more than ten days after he ſhall have demanded and been entitled to ſuch writ by the judge appointed by law, or if none be appointed, then by any judge of a ſuperior court, not more than ten days after ſuch writ ſhall have been ſerved on the perſon detaining him, and no order given for due examination for his remandment or diſcharge. Hab. Corp.

The military ſhall be ſubordinate to the civil power. Military.

Printing preſſes ſhall be ſubject to no other reſtraint than liableneſs to legal proſecution for falſe facts printed and published. Printing.

Any two of the three branches of government concurring in opinion, each by the voices of two thirds of their whole exiſting number, that a convention is neceſſary for altering this conſtitution, or correcting breaches of it, they ſhall be authorized to iſſue writs to every county for the election of ſo many delegates as they are authorized to ſend to the General Aſſembly, which elections ſhall be held, and writs returned, as the laws ſhall have provided in the caſe of elections of Delegates to aſſembly, mutatis mutandis, and the ſaid Delegates ſhall meet at the uſual place of holding aſſemblies, three months after the date of ſuch writs, and ſhall be acknowledged to have equal powers with this preſent convention. The ſaid writs ſhall be ſigned by all the members approving the ſame. Convention.

To introduce this government, the following ſpecial and temporary proviſion is made. Confederacy

This convention being authorized only to amend thoſe laws which conſtituted the form of government, no general diſſolution of the whole ſyſtem of laws can be ſuppoſed to have taken place: but all laws in force at the meeting of this convention, and not inconſiſtent with this conſtitution, remain in full force, ſubject to alterations by the ordinary legiſlature. Delegates to Congreſs.

The present General Assembly shall continue till the [illegible] day after the last Monday of November in this present year. On the said last Monday of November in this present year, the several counties shall, by their electors qualified as provided by this constitution, elect delegates, which for the present shall be, in number, one for every [illegible] militia of the said county, according to the latest returns in possession of the governor, and shall also chuse senatorial electors in proportion thereto, which senatorial electors shall meet on the 14th day after the day of their election, at the Court-house of that county of their present district which would stand first in an alphabetical arrangement of their counties, and shall chuse senators in the proportion fixed by this constitution. The elections and returns shall be conducted, in all circumstances not hereby particularly prescribed, by the same persons and under the same forms, as prescribed by the present laws in elections of Senators and Delegates of Assembly. The said Senators and Delegates shall constitute the first General Assembly of the new government, and shall specially apply themselves to the procuring an exact return from every county of the number of its qualified electors, and to the settlement of the number of Delegates to be elected for the ensuing General Assembly.

The present Governor shall continue in office to the end of the term for which he was elected.

All other officers of every kind shall continue in office as they would have done had their appointment been under this constitution, and new ones, where new are hereby called for, shall be appointed by the authority to which such appointment is referred. One of the present judges of the general court, he consenting thereto, shall by joint ballot of both houses of assembly, at their first meeting be transferred to the High Court of Chancery.

FINIS.

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MUSEUM